

# **EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

EMILY BRUNNER, individually and on ) Docket No. 14 C 5509  
behalf of all persons similarly )  
situated, as Class/Collective )  
representative, )  
Plaintiff, )  
vs. )  
JIMMY JOHN'S ENTERPRISES, INC., et )  
al., ) Chicago, Illinois  
Defendants. ) September 25, 2014  
9:30 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - STATUS  
BEFORE THE HONORABLE CHARLES P. KOCORAS

APPEARANCES:

For the Plaintiff: FOOTE, MIELKE, CHAVEZ & O'NEIL LLC  
BY: MR. PETER CURRIE  
10 W. State Street, Suite 200  
Geneva, Illinois 60134

For the Defendants: SEYFARTH SHAW LLP  
BY: MR. MATTHEW GAGNON  
MR. GERALD L. MAATMAN, JR.  
131 S. Dearborn St., Suite 2400  
Chicago, Illinois 60603

JACKSON LEWIS P.C.  
BY: MR. GREGORY ANDREWS  
MR. JEFFREY L. RUDD  
150 N. Michigan Avenue, Suite 2500  
Chicago, Illinois 60601

JACKSON LEWIS P.C.  
BY: MR. MATTHEW S. DISBROW  
2000 Town Center, Suite 1650  
Southfield, Michigan 48075

1 APPEARANCES (Continued):

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3 Court Reporter: MS. JOENE HANHARDT  
4 Official Court Reporter  
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PROCEEDINGS RECORDED BY  
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1           THE CLERK: 14 C 5509, Brunner vs. Jimmy John's  
2 Enterprises. Status.

3           MR. ANDREWS: Good morning, your Honor, Greg Andrews  
4 on behalf of JS Fort Group, Severson Affiliates Five, Severson  
5 Affiliates, Inc., Jeffrey Fort, Todd Severson and Brooke  
6 Severson.

7           THE COURT: Okay.

8           MR. MAATMAN: Good morning, your Honor, Gerald Maatman  
9 of Seyfarth Shaw on behalf the Jimmy John's corporate  
10 defendants.

11          THE COURT: Good morning.

12          MR. GAGNON: Good morning, your Honor, Matt Gagnon,  
13 also Seyfarth Shaw, on behalf of Jimmy John's corporate  
14 defendants.

15          THE COURT: Good morning.

16          MR. DISBROW: Good morning, your Honor, Matt Disbrow  
17 on behalf of all of the other non-corporate defendants.

18          THE COURT: Okay.

19          MR. RUDD: Jeff Rudd, also appearing from Jackson  
20 Lewis with Matt Disbrow and Jeff Andrews, on behalf of the  
21 non-corporate defendants.

22          THE COURT: Okay.

23          MR. CURRIE: Good morning, your Honor, Peter Currie on  
24 behalf of the plaintiffs.

25          THE COURT: Very good.

1           Where are we here?

2           MR. CURRIE: Judge, we amended our complaint last week  
3 as an initial matter.

4           I did want to point out that there is a scribner's  
5 error on -- just on -- the caption.

6           THE COURT: A scrivener -- a scrivener's -- error? Is  
7 that what you said?

8           MR. CURRIE: That probably is right, yes. It is  
9 probably "scrivener."

10          THE COURT: Okay.

11          I will not quibble about the pronunciation, but I want  
12 to make sure we are talking about the same thing.

13          MR. CURRIE: Absolutely, your Honor.

14          THE COURT: When you find that scrivener, he makes  
15 errors all the time.

16          (Laughter.)

17          THE COURT: Go ahead.

18          MR. CURRIE: Well, I always come in and say "status,"  
19 and Judge Shadur always corrects me.

20          THE COURT: So, did you correct the error?

21          MR. CURRIE: Pardon?

22          THE COURT: Did you correct the error?

23          MR. CURRIE: No, you know, because it was just brought  
24 to my attention one of the defendants we named was Jimmy John's  
25 Franchisor, LLC.

1           We have all of the proper defendants on there. That  
2 one is the error. So, in terms of correcting it, I don't know  
3 if you want us to just file a corrected caption?

4           THE COURT: Yes.

5           MR. CURRIE: Or if you want us to re-file the  
6 complaint, we can do that.

7           THE COURT: Well, just file a corrected caption if you  
8 do not have to change anything else. Okay?

9           MR. CURRIE: Okay.

10          THE COURT: So, we will take care of that.

11          MR. CURRIE: Okay.

12          THE COURT: So, now, responsive pleadings?

13          MR. MAATMAN: Your Honor, I advised plaintiff's  
14 counsel that I would accept service for all of the corporate  
15 Jimmy John's defendants except for our CEO, who is in Europe  
16 and doesn't know about the lawsuit. So, the individual CEO  
17 needs to be served. But we will take care of the rest.

18               And I think the parties have been talking about how --  
19 in a very complicated case, very large case, how -- to  
20 efficiently order and schedule the discovery. And --

21          THE COURT: This has to do with certain alleged  
22 overtime investments of time by managers or assistant managers  
23 or something like that?

24          MR. MAATMAN: That is correct, your Honor.

25               But, now the amended complaint has turned into an

1 80-page complaint and attacks, in essence, the business model  
2 of the franchisor/franchisee relationship. So, this joint  
3 employer issue is going to be very important.

4 But, in essence, there are tens of thousands of  
5 workers, both assistant store managers, hourly workers and  
6 delivery drivers. So, we do have a pretty broad field in front  
7 of us.

8 MR. CURRIE: Just one point of clarification on that,  
9 Judge.

10 In terms of --

11 THE COURT: Is all of that necessary -- is he right --  
12 if you are attacking the whole business model, when it comes to  
13 whether certain people did or did not get paid the right way?

14 MR. CURRIE: Absolutely, your Honor.

15 We -- you know, in the allegations, we -- have alleged  
16 that, essentially, this is not your traditional franchisor/  
17 franchisee relationship; essentially, that this is sort of, you  
18 know, an illusory agreement that, you know, essentially, their  
19 CEO and/or their corporate defendant has used the sort of  
20 franchisor/franchisee traditional arrangement to, essentially,  
21 just finance all of their -- the growth of their -- operations.

22 They control and micromanage everything.

23 THE COURT: So, what?

24 MR. CURRIE: Because --

25 THE COURT: How does that affect the manner in which

1 the employees are treated and paid?

2 MR. CURRIE: Because they have created those corporate  
3 policies. And those are -- the policies at issues are --  
4 corporate's policies. That is our allegation.

5 We have talked to people all across the county. None  
6 of the assistant managers are being paid hourly. We believe  
7 they are all misclassified, and they are all misclassified  
8 pursuant to corporate policies.

9 There is an additional issue or claim that was raised  
10 in this case -- and, again, it kind of highlights this issue --  
11 of the, you know, significant micromanagement. They control  
12 everything.

13 We have a -- Count 7 is for declaratory and injunctive  
14 relief. It is a Rule 23(b)(2) class for declaratory injunctive  
15 relief pursuant to a confidential and non-competition agreement  
16 that every employee has to sign.

17 And this is a direct corporate document from Jimmy  
18 John's Franchise LLC, and for the benefit of Jimmy John's  
19 Franchise LLC or corporate. It restricts --

20 THE COURT: All right. We are getting a little ahead  
21 of the game here.

22 MR. CURRIE: Sure.

23 THE COURT: I do not want you to try your case over  
24 the lectern at this early stage.

25 Yes?



1           MR. MAATMAN: Your Honor, just one point that might  
2 clarify your question.

3           You have before you two Illinois-based franchisees.  
4 The reason the case and the attack on the business model is the  
5 plaintiff's theory is Jimmy John's corporate is the joint  
6 employer with all 1900 franchisees in every state of the Union;  
7 and, by suing my client, the corporate defendant, he says there  
8 are wage and hour violations in all of these states by other  
9 franchisees he has not sued, but the corporate entity is  
10 responsible because it is an alleged joint employer.

11           And, so, the issue before you, then, separate and  
12 apart from these two Illinois-based franchisees, who have been  
13 sued by the plaintiff, is should Jimmy John's corporate be  
14 liable on a nationwide basis for all of these franchisees who  
15 are not before the Court?

16           So, that is why the joint employer issue, we think,  
17 drives the bus in this lawsuit.

18           THE COURT: Yes.

19           Well, that will have to be resolved.

20           MR. CURRIE: And, Judge, just to -- so, I could add  
21 just one more thing on the scope, it is actually the collective  
22 and class allegations only relate to assistant managers.

23           The drivers' reimbursement and the hourly employees  
24 working out the clock, those are pled just for the individual  
25 named plaintiffs.

1 THE COURT: Okay.

2 MR. CURRIE: So, those are not class and  
3 collective issues.

4 THE COURT: So, you have a certain putative class.  
5 You say it is narrower than the notion of all of the employees.

6 MR. CURRIE: Correct.

7 THE COURT: I will accept that.

8 MR. CURRIE: Correct.

9 THE COURT: And it is clear, if you are going to  
10 allege the corporation really is the co-obligor of every  
11 franchise in existence with the Jimmy John's name, that issue  
12 obviously has to be resolved.

13 And if that is what Mr. Maatman means by an attack on  
14 the business model, then it is a legitimate legal matter that  
15 we have to look into.

16 MR. CURRIE: Yeah.

17 THE COURT: So, I do not quarrel with that.

18 MR. CURRIE: I agree with that, too, your Honor.

19 MR. MAATMAN: And on September 3, I made a proposal to  
20 plaintiff's counsel on how to schedule the phases and orders.

21 He got back to me at 8:15 last night.

22 I would suggest perhaps to the Court that, in addition  
23 to the correction to the amended complaint, if the parties  
24 could have 10 days to try and present a stipulation to you --  
25 an agreement -- on how we would order things going forward, to

1 allow the case to be efficiently handled, that might be a --

2 THE COURT: Well, that would be helpful to me. I  
3 mean, sooner rather than later we are going to have to decide  
4 whether or not the allegation that the main company is on the  
5 hook elsewhere -- just assuming a violation -- we have to  
6 decide that, I think, sooner rather than later.

7 MR. MAATMAN: Our proposal -- and we have a basic  
8 agreement, details to be worked out -- is Phase One would be:  
9 Is there or is there not a joint employer relationship?

10 THE COURT: Yes.

11 MR. MAATMAN: Because that is going to drive the case.

12 THE COURT: No question.

13 Okay. When will -- but responsive pleadings are  
14 called for, anyway, in the interim, right?

15 MR. MAATMAN: Correct.

16 THE COURT: When will those been filed?

17 MR. MAATMAN: Within 20 days of today. We are  
18 discussing --

19 THE COURT: All right.

20 And, I assume --

21 MR. DISBROW: Well, actually, your Honor, we have got  
22 new defendants. There has been a waiver of service for 60 days  
23 for those defendants to answer.

24 I would suggest it would make sense that all  
25 defendants get 60 days to get their responsive pleadings in.

1 I am sure the Judge isn't going to -- the Court is not  
2 going to -- consider those piecemeal.

3 THE COURT: No.

4 Well, that is what I am trying to get at. I want the  
5 case to be at issue, as opposed to a motion pleading practice.

6 So, if that is what is coming, then, I do not -- I  
7 mean, time clearly is not of the essence. And if some  
8 defendants have 60 days to answer or otherwise plead, then I  
9 think everything should be on the same track.

10 But on the assumption that this case is going to go  
11 forward with somebody -- with at least the plaintiff and at  
12 least one defendant -- then I think the idea of trying to get  
13 together and create some protocol to proceed with, at least,  
14 the central question of the relationship of the entity, would  
15 be helpful. And the more you can agree and stipulate, the more  
16 efficient the case will progress.

17 So, I think for present purposes -- when was the  
18 service on any defendant who has got 60 days to file?

19 MR. DISBROW: As to the Severson Group and --  
20 defendants, your Honor -- I believe 60 days would be  
21 November 22nd.

22 We calculated that before we came to court today.

23 MR. GAGNON: Yes.

24 MR. DISBROW: I don't know about the status of the  
25 corporate -- new corporate -- defendants.

1           THE COURT: Well, let me just order all responsive  
2 pleadings to take place November 22nd. And I hope that gives  
3 everybody enough time even if, under the rules, maybe some will  
4 have a few more days beyond that. Because I would like to put  
5 you all on the same track.

6           And, also, what I would like you to do is to get  
7 together in the way you have suggested and, I think, makes  
8 sense.

9           So, then, I want to see you shortly after that, to  
10 tell me where you are and where we are with all of the entities  
11 and the filings. Okay?

12           So, I think that is the best way to do it.

13           So --

14           MR. CURRIE: Shortly after which date, your Honor?

15           THE COURT: Pardon me?

16           MR. CURRIE: Shortly after everybody's responsive  
17 pleading date?

18           THE COURT: Yes, right. We need those on file, so we  
19 know exactly what we are dealing with.

20           Somebody may file a motion to dismiss which, at least,  
21 may stay discovery. I do not really know. But --

22           MR. DISBROW: And as a matter of candor, your Honor, I  
23 will say that the franchisees are considering a number of  
24 motions to dismiss; and, indeed, potentially a motion to sever,  
25 based upon the pleadings alone. So --

1 THE COURT: All right.

2 I will not prejudge that, but we will see what is  
3 filed and what the bases are for the filings.

4 So, Yolanda -- you are not Yolanda.

5 She is sitting out in the -- I am getting a  
6 substitution here and I am still a day late.

7 (Laughter.)

8 THE COURT: Vettina, give me a date.

9 THE CLERK: November 25th at 9:30.

10 THE COURT: All right?

11 Are you all Illinois lawyers here?

12 MR. DISBROW: I am not, your Honor.

13 THE COURT: Where are you from?

14 MR. DISBROW: Michigan.

15 I am --

16 THE COURT: I want to know how inconvenient it is  
17 for --

18 MR. DISBROW: It is fine, your Honor. I come to  
19 Chicago quite often. I do a lot of trips.

20 THE COURT: Do you like it here?

21 MR. DISBROW: Yes. Great city, your Honor.

22 THE COURT: Good.

23 You are welcome.

24 (Laughter.)

25 MR. DISBROW: It is not Detroit, but --

1 (Laughter.)

2 THE COURT: No, it is not Detroit.

3 (Laughter.)

4 THE COURT: We will not take that any further than  
5 that.

6 (Laughter.)

7 THE COURT: I am not the Chicago Chambers of Commerce.

8 (Laughter.)

9 MR. DISBROW: All right.

10 THE COURT: All right. I will see you back then.

11 MR. GAGNON: Thank you, your Honor.

12 MR. DISBROW: Thank you, your Honor.

13 MR. MAATMAN: Thank you, Judge.

14 \* \* \* \* \*

15 I certify that the foregoing is a correct transcript from the  
16 record of proceedings in the above-entitled matter.

17 /s/ Joene Hanhardt  
18 Official Court Reporter

November 12, 2014

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